

# EDITORIAL

---

June 15, 2009

## Open Records Law Needs an Overhaul

*By Dave Trabert*

Word Count: 528

*“An open and transparent government is essential to the democratic process. Under Kansas law, citizens have the right to access public records and observe many meetings where decisions are made that affect our state.”*

That quote is taken from the Kansas Attorney General's web site. Unfortunately, the second sentence isn't really true. Kansans may technically have the right to access some public records (those not protected by more than 300 exemptions the Legislature has granted), but too often we lack the ability because of government opposition.

Our own ongoing struggle is a classic example of overt, and to some extent, coordinated, government efforts to deny taxpayers access to public information. On April 15, we e-mailed open records requests to county appraisers, asking for 2009 appraisal data and some historical information on residential appraisals. Initial replies ranged from full, speedy and courteous fulfillment of the request to no reply whatsoever, even though the Kansas Open Records Act (KORA) requires that government respond within three business days.

In some cases, the reply was essentially, 'go away.' Some said the 2009 data wouldn't be released until it was certified to the County Clerk; even though there is no such exemption under KORA. Others said they wouldn't release the data until we signed their Open Records form, some of which asked for information that KORA expressly prohibits.

Others hid behind a provision that permits government to reject a request that causes them to 'create' a record, meaning they don't have to provide information unless it is maintained in the exact manner in which it is requested. Government shouldn't have such broad latitude, but they do. One part of our request is covered by that exemption, but even after we arranged for their software vendors to supply a free update that would generate the requested information, some counties refuse to provide the information.

Charging high costs to receive information is another way to discourage the public. KORA allows government to charge the actual cost of providing information, but some counties attempted to charge us more.

There are other, even more egregious examples of government's open attempts to discourage legitimate requests. The Shawnee County appraiser wrote a 'Dear Colleagues' letter, encouraging others to seek the guidance of their legal counsel and informing them of his intention to deny portions of our request. Last week in front of a large gathering, the Sumner County appraiser screamed at me for 'demanding' information and 'threatening' (having the temerity to challenge their county counselor's decision).

Two months after our initial request we have complete information from only 67 counties. Formal complaints filed with county attorneys were largely ignored, so we have notified the remaining 38 counties that our next step will be to file suit to compel compliance. Unfortunately, that is the only recourse and one that many citizens lack the means to pursue.

This travesty must end. The Legislature should completely rewrite KORA so that citizens' rights to access public information are completely protected. No charges for information...limited exemptions...requirements to find ways to comply even if it means creating a record...and realistic enforcement provisions. After all, an open and transparent government is essential to the democratic process.

###

*Dave Trabert is President of the Kansas-based Flint Hills Center for Public Policy and he can be reached at [dave.trabert@flinthills.org](mailto:dave.trabert@flinthills.org).*

---

*Flint Hills Center for Public Policy is a non-profit organization that pursues free-market oriented public policy solutions and initiates reform in fiscal policy, education and health care. For more information, please visit our web site at [www.flinthills.org](http://www.flinthills.org) or contact us at (316) 634-0218 or [information@flinthills.org](mailto:information@flinthills.org).*



250 N. Water, Suite #216    Wichita, Kansas 67202-1215    (316) 634-0218  
[information@flinthills.org](mailto:information@flinthills.org)    [www.flinthills.org](http://www.flinthills.org)

---